THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21865 of 1997

Dated 22-03-2007

Between:
Ameenuddin H. Makandar.

..... PETITIONER

AND

The Secretary, Railway Recruitment Board for South Central Railway, Behind Seethaphal Mandi Railway Station, Secunderabad and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21865 of 1997

O R D E R:

Petitioner seeks a mandamus to declare the action of the respondents in not fixing his seniority on par with the fourth respondent by promoting him to the post of Inspector of the Railway Protection Force as arbitrary and illegal and to have the proceedings dated 12-05-1997, based on the earlier proceedings dated 02-02-1980, set aside and to consequently promote him to the post of Inspector of the Railway Protection Force reckoning his seniority on par with the fourth respondent.

Facts, in brief, are that the petitioner passed his S.S.L.C. examination in the year 1969 and was selected as a constable on 25-02-1975. He, thereafter, passed the Sub-Officers' course at the National Fire Service College, Nagpur in the year 1979. The fourth respondent was appointed as a constable on
17-11-1979. Even prior thereto, the first respondent issued a notification inviting applications to fill up vacancies in various categories including that of Sub-Inspector (Fire) in the pay scale of Rs.330-560. Both the petitioner and the fourth respondent applied for the post of Sub-Inspector (Fire).

It is the specific case of the petitioner that the fourth respondent was appointed as a constable when he was 26 years old and as per the notification, he was beyond the prescribed upper age limit of 24 years for being appointed as a Sub-Inspector. Petitioner would contend that since the fourth respondent was not even a member of the Railway Protection Force, when the notification came to be issued, he was not entitled for relaxation in the upper age limit

which was made available to serving railway employees. The fourth respondent was, nonetheless, given the benefit of age relaxation and was appointed in the post of Sub-Inspector on 24-02-1981. The petitioner submitted a representation in 1980 and, vide proceedings dated 02-02-1980, he was informed that his application had been rejected on the ground that he was over aged. Petitioner's subsequent representations dated
02-10-1995 and 07-09-1996 were considered and he was informed, vide proceedings dated 12-05-1997, that even earlier vide proceedings dated 02-02-1980 he was informed that he had not complied with the instructions in the advertisement with reference to para 8 and that no further action could be taken by the respondents in this regard. Petitioner was subsequently promoted as a Sub-Inspector (Fire) on 09-10-1991.

The grievance of the petitioner in this writ petition is that though the fourth respondent was ineligible for grant of age relaxation since he was not a serving railway employee, and inasmuch as the fourth respondent was given the benefit of age relaxation which he was not entitled to, the petitioner ought to have been extended the similar benefit which would have rendered him eligible for being appointed as a Sub-Inspector (Fire) even prior to the appointment of the fourth respondent. Petitioner would contend that he would then be entitled to be placed above the fourth respondent in the seniority list of Sub-Inspectors (Fire) i.e. prior to 24-02-1981.

In the counter affidavit filed on behalf of the respondents, the fact that the fourth respondent was appointed as a constable on 17-11-1979 is admitted.

Sri J.M.Naidu, learned counsel for the petitioner, would contend that since age relaxation, under the notification, is available only to serving railway employees, it is only a person who is a

member of the Railway Protection Force, who would come under the category of serving railway employees and, since a person is entitled to become a member of the Railway Protection Force only on a certificate being issued to him, in this regard on completion of training, it is only thereafter would he become a member of the Railway Protection Force and consequently be entitled to be treated as a serving railway employee. Learned counsel would submit that, since the cut-off date for age relaxation, under the notification, is 10-10-1979 and inasmuch as the fourth respondent was appointed as a constable in the Railway Protection Force only thereafter on 17-11-1979, he did not come under the category of serving railway employees and was not entitled for being extended the benefit of age relaxation under the notification. Learned counsel would submit that since para 113 of the Indian Railway Establishment Manual empowers the respondents to grant relaxation of the rules, such relaxation ought to have been granted in the petitioner's favour since he was a serving railway employee and not in favour of the fourth respondent. Learned counsel would submit that, while the petitioner had not specifically challenged the appointment of the fourth respondent as a Sub-Inspector (Fire), this Court, had, nonetheless, the power to mould the relief accordingly and set aside the appointment of the fourth respondent or grant the petitioner the similar benefit of age relaxation. Learned counsel would rely on **Rabindra Nath Ghosal v. University of Calcutta**[1]. Learned counsel would submit that, since the petitioner's representation was finally rejected only on

12-05-1997, and as he had soon thereafter invoked the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner's claim for being given seniority over and above the fourth

respondent cannot be said to be belated. Learned counsel would submit that delay by itself was not a ground to deny the relief to the petitioner and would rely on **M.Ariffuddin Nizami v. D.D.Chitale**[2]. He would also rely on **Satpal v. State of Haryana**[3] and **Krishan Yadav v. State of Haryana**[4]**.** Learned counsel would submit that, in any event, since the writ petition had been admitted, and has been pending on the file of this Court for nearly a decade, the question of limitation need not be gone into by this Court and the petitioner should not be denied the relief solely on the ground of laches. Learned counsel would place reliance on **Hyderabad Plywood Industries v. Govt. of A.P.**[5] and **Vinayaka Wines v. Commercial Tax Officer**[6]. Learned counsel would contend that once this Court finds that the process of selection is contrary to the rules, even if a specific relief is not sought for in this regard, it is always open to this Court to set aside the process of selection.

Sri G.S.Sanghi, learned Senior Standing counsel for the Railways, on the other hand, would contend that the writ petition as filed is highly belated and is liable to be dismissed on the ground of laches. Learned counsel would point out that the petitioner, in effect, questions the appointment of the fourth respondent as a Sub-Inspector in the year 1981. According to the learned counsel, less than a year prior thereto, vide proceedings dated 02-02-1980, the petitioner was informed that his candidature for appointment to the post of Sub-Inspector (Fire) had been rejected and having kept silent for more than a decade and a half, the petitioner had invoked the jurisdiction of this Court only in the year 1997 and, in the absence of any explanation much less a reasonable explanation for the inordinate delay, the petitioner was disentitled from being granted the

relief sought for solely on the ground of delay and laches. Learned counsel would point out that, even in the proceedings dated 12-05-1997, the respondents had referred to the earlier proceedings dated 02-02-1980 whereby the petitioner's candidature for appointment to the post of Sub-Inspector (Fire) had been rejected. Learned counsel would rely on **State of Punjab & another v. Balkaran Singh**[7]. Learned counsel would point out that, since the fourth respondent was initially selected in February 1979, even prior to the notification, the mere fact that he was undergoing training and was not issued a certificate, would not result in his being treated otherwise than as a member of the Railway Protection Force and as a serving railway employee. Learned counsel would submit that for the purpose of counting the service of any employee, the training period is also required to be taken into consideration and, if it is so taken, the fourth respondent must to be held to be a serving railway employee and to be entitled for the benefit of age relaxation under the notification and inasmuch as the official respondents had, in exercise of the powers conferred under para 113 of the Indian Railway Establishment Manual, granted age relaxation, the action of the respondents could not be faulted. Learned counsel would rely on **R.S.Ajara v. State of Gujarat**[8] and on a judgment of this Court in W.P.No.22596 of 1995 dated 31-01-2007, in support of his submission that even the training period is required to be included while computing the service as a Sub-Inspector. Learned counsel would point out that, since the petitioner had not challenged the validity of the selection and appointment of the fourth respondent as a Sub-Inspector, he could not seek to have the appointment set aside. According to the learned counsel, even assuming that the appointment of the fourth respondent was contrary to the rules, the

petitioner could not claim a similar benefit for that would, in effect, amount to perpetuating an illegality. Learned counsel would rely on **Southern Eastern Coal fields Ltd. v. Prem Kumar Sharma & others**[9] and **National Institute of Technology, Jamshedpur & others v. Chandra Shekhar Chaudary**[10]**.** Learned counsel would point out that, even assuming that the fourth respondent was ineligible on the date of the notification, subsequently, in the year 1981, when the cases of both the petitioner and the fourth respondent were considered, while the fourth respondent was found eligible for being appointed as a Sub-Inspector in accordance with the earlier notification, the petitioner was found to be overaged by 3 months 10 days beyond the age limit including the relaxation as prescribed in the notification itself and it was for this reason that the fourth respondent was appointed as a Sub-Inspector and a similar benefit was denied to the petitioner. Learned counsel would contend that in the year 1991 as a result of the change in policy, the upper age limit was given a go-bye and the petitioner was considered for appointment to the post of Sub-Inspector (Fire) as he fulfilled all other qualifications other than age.

Before the rival contentions are examined, it is necessary to refer in brief to the applicable statutory provisions and rules.

Section 2(c) of the Railway Protection Force Act, 1957 defines a ‘member of the Force’ to mean a person appointed to the Force under the Act other than a superior officer. Section 5 classifies the officers of the force in the order mentioned thereunder. Among “A Class” Officers is the post of Sub-Inspector. Class B relates to classes of other ranks and includes the post of Rakshak which post both the petitioner and the fourth respondent held prior to their being appointed as Sub-Inspectors (Fire). Section 7 relates to Certificates

to be given to the members of the force and reads thus:

> 1. Every member of the Force shall receive on his appointment a certificate in the form specified in the Schedule, under the seal of the Chief Security Officer or such other superior officer as the Chief Security Officer may specify in this behalf, by virtue of which the person holding such certificate shall be vested with the powers of a member of the Force.
>
> 2. Such certificate shall cease to have effect whenever the person named in it cease for any reason to be a member of the Force, and, on his ceasing to be a member of the Force, shall be forthwith surrendered by him to any superior officer empowered to receive the same.

Under Section 10, every member of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890, and shall be entitled to exercise the powers conferred on railway servants by or under that Act. The Schedule to the Railway Protection Force Act illustrates the provisions prescribed under Section 7 and provides that a person appointed as a member of the Railway Protection Force is vested with the powers, functions and privileges of a member of the Force.

In exercise of the powers conferred under Section 21 of the Railway Protection Force Act, 1957, the Central Government made the Railway Protection Force Rules, 1959. In exercise of the powers conferred under Rule 32 of the Railway Protection Force Rules, 1959, the Railway Protection Force Regulations, 1966 were made. Chapter X relates to Recruitment and Appointment and regulation 17 thereunder, which relates to issue of a certificate of appointment, reads thus:

> "The certificate of appointment to both the S.I. Cadets and Rakshak recruits shall be delivered to them at the Training School after they have successfully completed their training. Loss of this certificate will render the member concerned liable to pay a fee of Rs.2/- in addition to any other departmental action considered necessary. On the payment of fee, a duplicate copy

of this certificate will be issued."

Under regulation 26(iii)(a), the seniority of directly recruited Sub-Inspectors is fixed according to the merit position obtained in the final examinations of Sub-Inspectors in the Initial Course at the Training Centre.

Chapter XI relates to Training and 2(B) thereof relates to Rakshak Recruits and reads thus:

(B) For Rakshak Recruits:-

(i) All recruits enlisted in the various Branches of the Force shall be sent in batches for different sessions to the Training School for the initial course. The duration of training shall normally be 8 months, including one month for practical technical training. This period may be reduced by the C.S.O. with the approval of I.G. under special condition. Training-indoor, outdoor and practical – shall be imparted strictly in accordance with the syllabi as prescribed in the Training Manual. A register showing the progress of the trainees of each batch shall be maintained by the Principal in which the following information will be recorded periodically.

(a) the weight of the recruit on arrival and thereafter every three months.

(b) the result of periodical test in the various subjects including physical efficiency tests.

(c) marks obtained at final test including those obtained in the musketry firing.

(d) final remarks of the Principal wherein shall be indicated whether the recruit has got any special aptitude for a particular post or Branch in the Force.

(ii) At the conclusion of the training a consolidated result sheet will be submitted by the Principal to the C.S.O. for his approval. If any Rakshak recruit fails to pass the final examination, his case will be dealt within the same manner as prescribed for S.I. cadets.

(iii) After the successful completion of training in the school, each Rakshak recruit shall be normally posted back to the Region/Division or Unit or Branch from where he was sent for training except where otherwise ordered by the C.S.O. The individual results sheets of the recruits will be prepared in the prescribed form and will be forwarded along with the character rolls to the A.S.Os concerned.

It is seen from the aforesaid clause that if a Rakshak recruit fails to pass the final examination, his case will be dealt with as prescribed for S.I. cadets. Regulation 2(A)(v) relates to S.I. cadets and reads thus:

(I) An S.I. trainee who fails may be allowed one more chance to undergo training in the next batch provided:-

(a) he has not failed in more than 2 subjects ; and

(b) he has not failed by more than 5 marks in each subject ;

(c) he has not failed in one subject by more than 10 marks ; and

(d) he has not failed by more than 10 marks in the total aggregate.

(II) The S.I. trainee given a second chance to training, if again fails, shall be:-

(a) reverted to his substantive post, if he be a departmental promotee;

(b) discharged from service, if he be a direct recruit.

A conjoint reading of the provisions of the Act, the Rules and the regulations make it amply clear that it is only when a trainee successfully completes training, and is given a certificate, would he be entitled to be treated as a member of the Railway Protection Force and consequently as a railway servant. Both on the date of the notification and the last date prescribed therein i.e. 10-10-1979, the fourth respondent was not a member of the Railway Protection Force since he was still a trainee and had not been issued the certificate required, to be issued on completion of training, to be a member of the force. It was only on 17-11-1979, when he was appointed as a Rakshak did he become a member of the Railway Protection Force.

In this context, it is useful to refer to the contents of the notification, whereby applications were invited for appointment to the post of Sub-Inspector (Fire). Category 3 of the notification relates to

Sub-Inspector (Fire) and the age prescribed thereunder is between 19 and 24 years. Clause 6 of the note appended thereto specifically provides that the age would be reckoned as on 01-10-1979. It is not in dispute that both the petitioner and the fourth respondent were above 24 years of age as on 01-10-1979 and as such were ineligible to be appointed as Sub-Inspectors (Fire). Note 8 of the notification, however, provided for age relaxation of 5 years for various categories including serving railway employees. If the fourth respondent was a serving railway employee, he was then entitled for relaxation of age by 5 years which would render him eligible for appointment as a Sub-Inspector (Fire). The petitioner's case, however, stands on a different footing as even if the benefit of 5 years age relaxation were to be granted, he would still be over aged by 3 months 10 days. The fact, however, remains that the fourth respondent was not a serving railway employee and was merely a Rakshak trainee both on 01-10-1979, the date of the notification or 10-10-1979, the last date for receipt of the applications and was, therefore, ineligible for age relaxation under clause 8 of the note appended to the notification.

The mere fact that the training period is required to be included, in computing the service rendered as a Sub Inspector, would not necessitate a trainee to be treated as a member of the Railway Protection Force since it is only when a trainee successfully completes his training, and is issued a certificate as proof of his having done so, would he become a member of the Railway Protection Force and thereafter be entitled to be treated as a serving railway employee. In the present case the 4th respondent was appointed on 17.11.1979 after completion of his training and on his being issued a certificate in this regard. Both on the cut off date

prescribed in the notification i.e., 1.10.1979, and on the last date of receipt of applications i.e., 10.10.1979, the 4th respondent was still a trainee and not a member of the Railway Protection Force and as such was not entitled to be treated as a serving railway employee or to be extended the benefit of age relaxation which was available to serving railway employees. Reliance placed on **R.S. Ajara**[8], and the judgment in W.P.22596 of 1995 dated 31.1.2007, is misplaced since the aforesaid provisions of the Railway Protection Force Act and the Rules and Regulations made thereunder were not examined in the aforesaid judgments.

The contention of Sri G.S.Sanghi, learned Senior Standing counsel for the Railways, is that on the date on which the case of the fourth respondent was considered for appointment in 1981, he was a serving railway servant. It is true that after 17-11-1979, the fourth respondent became a member of the Railway Protection Force and, thereafter, was entitled for the benefit of age relaxation as a serving railway servant. It cannot, however, be lost sight of that the notification required age to be reckoned as on 01-10-1979 on which date the fourth respondent was admittedly not a serving railway employee. It is not clear as to the basis on which his case was considered in 1981. If it was by direct recruitment, then a notification ought to have been issued inviting applications from all eligible candidates and if it was by promotion, then all candidates, who were eligible for promotion ought to have been considered. In appointing the fourth respondent as Sub-Inspector (Fire) the applicable statutory provisions and the rules and regulations have been clearly flouted.

The question, however, is as to whether the petitioner is entitled, at this point of time, to claim parity in treatment with the fourth respondent, more so, when the appointment of the fourth

respondent as Sub-Inspector (Fire) is not even under challenge in this writ petition. While Sri J.M.Naidu, learned counsel for the petitioner, would contend that this Court has the power to mould the relief, the question, once again, is one of exercise of discretion. The fourth respondent was appointed as a Sub-Inspector in 1981 and 16 years thereafter, for the first time in 1997, the petitioner had chosen to invoke the jurisdiction of this Court by way of the present writ petition and even in this writ petition, he has merely claimed that a similar benefit be extended to him on par with the fourth respondent and has not chosen to challenge the appointment of the fourth respondent as Sub-Inspector (Fire). Though notice in the writ petition was served on the fourth respondent, he has not chosen to enter appearance. While he may not be aggrieved by the petitioner's claim for parity, any challenge to his very appointment cannot be permitted to be raised without a specific relief being sought for and without the fourth respondent being given an opportunity of being heard in this regard. I see no reason to exercise discretion under Article 226 of the Constitution of India to mould the relief and set aside the appointment of the fourth respondent, who was appointed as Sub-Inspector (Fire) as early as in the year 1981.

Now the question as to whether the petitioner is entitled to claim parity. The very appointment of the fourth respondent, as has been detailed above, would show that it is in violation of the applicable statutory provisions. Claiming parity or the benefit of similar treatment would necessitate this Court issuing a mandamus to the respondents to perpetuate an illegality. It is well settled that no mandamus or direction can be sought from this Court to perpetuate an illegality (**Chandigarh Administration v. Jagjit Singh**[11]; **Prem Kumar Sharma**[9]; **Chandra Sekhar Chaudary**[10]). It must also be

remembered that the petitioner has chosen to keep silent for more than a decade and a half after the fourth respondent's appointment as a Sub-Inspector (Fire). No explanation, much less a reasonable explanation, has been furnished for the inordinate delay in invoking the jurisdiction of this Court under Article 226 of the Constitution of India except stating that repeated representations had been made to the authorities concerned.

Reliance placed by the petitioner on **Krishan Yadav**[4] is misplaced. In the said case the writ petition, filed challenging selections to the post of Taxation Inspectors on the ground of fraud, was dismissed by the High Court holding that the allegations could not be ascertained as all the answer sheets and tabulation sheets had been destroyed. It is in this context that the Supreme Court observed that, since the entire selection process was a farcical exercise and a systematic fraud, it was surprising that the High Court should have taken the path of least resistance stating that in view of the destruction of records it was helpless. The Supreme Court held that the law was not that powerless and that the High Court should have interfered in the matter. The said judgment has no application to the facts of the present case.

In **Satpal**[3], the Supreme Court held that once the process of selection was found to be tainted, whatever followed consequent thereto must also fall within the process of selection. The question, as to whether inordinate delay in invoking the jurisdiction of this Court would entitle the petitioner to the relief sought for, did not arise for consideration therein.

In **Hyderabad Plywood Industries**[5], the Division Bench of this Court held that though no period of limitation in prescribed for filing a writ petition, as a rule of practice the period is taken as six

months for approaching the High Court and that it would be inappropriate to throw out the writ petition on the ground of latches when on merits the petitioner is entitled to succeed on the principle of an earlier decision of the Court. The Division Bench held that latches is one of the factors which the Court must take into consideration in deciding whether to interfere in a particular matter having regard to the facts and circumstances of that case and that no hard and fast rule can be enunciated in this regard. In the present case the delay, in invoking the jurisdiction of this Court, is of more than a decade and a half and in the absence of any reasonable explanation it must, necessarily, be held to be inordinate.

In **Vijayaka Wines**[6], the Division Bench held that a writ petition cannot be rejected on the ground of availability of an alternative remedy when the writ petition had already been admitted and rule nisi was issued. The question which arises for consideration in the present case is of inordinate delay and latches and not existence of an alternative remedy.

In **D.D. Chitale**[2], the Division Bench of this Court held that mere delay by itself was not a ground for rejecting an application under Article 226 of the Constitution of India unless it is so inordinate and is likely to upset vested rights of other parties who had received benefit on account of the delay or latches on the part of the writ petitioners. In the present case the delay is of more than a decade and a half and the petitioner, in effect, seeks to have the appointment of the 4th respondent as Sub-Inspector (Fire), made in the year 1981, set aside. Reliance placed on **D.D. Chitale**[2] is, therefore, misplaced.

The Supreme Court in **Amrit Lal Berry, K. N. Kapur v. Collector of Central Excise Central Revenue**[12], held that by

merely filing repeated or delayed representations, a petitioner cannot get over the obstacles which delay in approaching the Court creates. The petitioner has not shown cause, much less reasonable cause, for the inordinate delay, of a decade and a half, in invoking the jurisdiction of this Court under Article 226 of the Constitution of India. I see no reason to entertain such a belated claim at the instance of a person, who has slept over his rights for more than 15 years and to now unsettle events which took place in 1981.

The Writ Petition fails and is accordingly dismissed. However, in the circumstances without costs.

_____

22-03-2007

usd

---

[1] AIR 1992 CALCUTTA 207
[2] 1973(2) SLR 119
[3] 1995(3) SLR 787
[4] 1994(2) SLR 719
[5] 1990(2) ALT 57 (DB)
[6] 1990(2) ALT 121 (DB)
[7] 2006(8) Supreme To-day 417
[8] 1997(3) SCC 641
[9] 2006(5) Supreme today 655
[10] 2006(8) Supreme today 842
[11] AIR 1995 SC 706
[12] AIR 1975 SC 538